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17 *Attorneys for Defendant Zoho Corporation.*

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21                   **UNITED STATES DISTRICT COURT**  
22                   **NORTHERN DISTRICT OF CALIFORNIA**

23                   TRICIA TAMKIN, an individual

24                   Plaintiff,

25                   v.

26                   ZOHO CORPORATION, a California  
27                   Corporation.

28                   Defendant.

Case No. 4:19-cv-07465-KAW

**DEFENDANT ZOHO  
CORPORATION'S AMENDED  
NOTICE OF REMOVAL OF  
CIVIL ACTION**

**Complaint Filed: October 28, 2019**

1           **TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR**  
2           **THE NORTHERN DISTRICT OF CALIFORNIA, PLAINTIFF AND**  
3           **PLAINTIFF'S ATTORNEYS:**

4           **PLEASE TAKE NOTICE THAT**, under 28 U.S.C §§ 1331, 1441, 1446, and  
5           1454 defendant Zoho Corporation (“Zoho”) hereby removes the state court  
6           action described below from the Superior Court of the State of California for  
7           the County of Alameda where it is currently pending as Case No.  
8           RG19040983 to the United States District Court for the Northern District of  
9           California, and submits the following statements of facts, which entitles it to  
10          removal.

11           This Court has original jurisdiction over this action under 28 U.S.C.  
12          §§ 1331 and 1454 on the grounds that the Superior Court complaint seeks  
13          adjudication of a copyright dispute solely arising under federal law, 17 U.S.C.  
14          §§ 101 *et seq.*

15           **COMPLIANCE WITH STATUTORY REQUIREMENTS**

16           On or about October 28, 2019, Plaintiff Tricia Tamkin (“Plaintiff”) filed  
17          a complaint in the Superior Court of California for the County of Alameda,  
18          entitled *Tricia Tamkin. v. Zoho Corporation*, case no. RG19040983.  
19          Complaint, Exhibit A at p. 1. The Complaint asserts Zoho used without  
20          authorization Plaintiff’s name and likeness in marketing and advertising  
21          materials and alleges causes of action for (1) misappropriation of Plaintiff’s  
22          name and likeness under California law, (2) misappropriation of Plaintiff’s  
23          name and likeness under common law, (3) defamation, (4) violation of right of  
24          publicity under Illinois law, and (5) copyright infringement under common  
25          law. Complaint, Exhibit A at ¶¶ 12, 17-44. Zoho was served with the  
26          Summons and Complaint on November 4, 2019.

27           Pursuant to 28 U.S.C. § 1446(b)(1), a notice of removal may be filed  
28          “within 30 days after the receipt by the defendant, through service or

otherwise" of the initial pleading from which removability can be ascertained. 28 U.S.C. § 1446(b)(1). Here, Zoho's notice of removal is timely because it is filed within 30 days after being served with the Summons and Complaint.

Pursuant to 28 U.S.C § 1446(d), Zoho will promptly provide written notice of removal of this action to Plaintiff and will promptly file a copy of this Amended Notice of Removal with the Clerk of the Superior Court of California for the County of Alameda.

The United States District Court for the Northern District of California embraces Alameda, the county in which this Action is brought. Therefore, the Court is a proper venue for this Action pursuant to 28 U.S.C. §§ 84 (c) and 1441(a).

### **STATEMENT OF THE GROUNDS FOR REMOVAL**

As set forth more fully below, this Court has exclusive subject matter jurisdiction under 28 U.S.C. § 1331, which states that "the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States," and under 28 U.S.C. § 1454, which states that "[a] civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights may be removed to the district court of the United States for the district and division embracing the place where the action is pending."

### **The Superior Court Action Arises Under Federal Copyright Law**

A state action can generally be removed if that action could have been brought originally in federal court, *i.e.*, if the District Court has original jurisdiction. 28 U.S.C. § 1441(a); *see also* 28 U.S.C. § 1454 (recognizing removal if an asserted claim for relief arises under "patents, plant variety protection, or copyrights"); *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). To determine whether this Court has original jurisdiction, this Court "examine[s] the 'well

1 pleaded’ allegations of the complaint and ignore[s] potential defenses.” *Beneficial*  
 2 *Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003) (citations omitted).

3 “The presence or absence of federal-question jurisdiction is governed by the  
 4 ‘well-pleaded complaint rule.’” *Caterpillar Inc.*, 482 U.S. at 392. Under the well-  
 5 pleaded complaint rule, federal-question jurisdiction arises where the “complaint  
 6 establishes either that federal law creates the cause of action or that the plaintiff’s  
 7 right to relief necessarily depends on resolution of a substantial question of federal  
 8 law.” *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 27-28  
 9 (1983). “Once an area of state law has been completely pre-empted, any claim  
 10 purportedly based on that pre-empted state law is considered, from its inception, a  
 11 federal claim, and therefore arises under federal law.” *Caterpillar Inc.*, 482 U.S. at  
 12 393.

13 A plaintiff’s state-law cause of action is preempted under 17 U.S.C. § 301(a)  
 14 if: (1) the work involved falls within the general subject matter of the Copyright  
 15 Act as specified by sections 102 and 103; and (2) the rights that the plaintiff asserts  
 16 under state law are equivalent to those protected by the Act in section 106 in works  
 17 of authorship that are fixed in a tangible medium of expression. *See* 17 U.S.C. §  
 18 301(a); *Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1213 (9th Cir.1998);  
 19 *Valente-Kritzer Video v. Pinckney*, 881 F.2d 772, 776 (9th Cir.1989); *Del Madera*  
 20 *Properties v. Rhodes & Gardner, Inc.*, 820 F.2d 973, 976 (9th Cir.1987).

21 Here, Plaintiff’s common law copyright claim alleges ownership of the  
 22 photograph of Plaintiff’s likeness. Complaint, Exhibit A at ¶ 42. A photograph  
 23 falls under the general subject matter of the Copyright Act. *See* 17 U.S.C.  
 24 102(a)(5) (“pictorial, graphic, and sculptural works.”). Plaintiff further alleges that  
 25 Zoho’s reproduction, visual display and distribution of Plaintiff’s photograph is  
 26 unlawful. Complaint, Exhibit A at ¶ 42. The rights asserted fall squarely under the  
 27 rights protected by section 106(1), (3), and (5), *i.e.*, reproduction, distribution and  
 28 display. Finally, Plaintiff seeks relief provided by 17 U.S.C. §§ 502 (injunction),

1 504 (damages and profits), and 505 (costs and attorneys' fees). Complaint, Exhibit  
 2 A at p. 7. Plaintiff asserts copyright infringement as defined in the Copyright Act  
 3 and seeks relief defined in the Copyright Act. *Vestron, Inc. v. Home Box Office, Inc.*, 839 F.2d 1380, 1382 (9th Cir. 1988) ("The complaint makes out an  
 4 infringement claim and seeks remedies expressly created by federal copyright  
 5 law.").

6       Each of Plaintiff's remaining causes of action depend on the same  
 7 operative facts as the copyright claim, namely, unauthorized reproduction,  
 8 distribution and display of Plaintiff's photograph. *See* Exhibit A, Complaint, at  
 9 ¶¶ 21, 25, 28, and 37. This Court has supplemental jurisdiction under 28  
 10 U.S.C. § 1337(a) because those claims are "so related" to the Copyright claims  
 11 "that they form the same case or controversy under Article III of the United  
 12 States Constitution." Because all of Plaintiff's claims arise from a "common  
 13 nucleus of operative fact," supplemental jurisdiction extends to those claims  
 14 that do not enjoy original jurisdiction in this Court. *United Mine Workers of  
 15 Am. v. Gibbs*, 383 U.S. 715, 725 (1966); *Arizona v. Cook Paint & Varnish Co.*,  
 16 541 F.2d 226, 227 (9th Cir.1976).

17       Because Plaintiff's copyright cause of action arises under the Copyright  
 18 Act, this Court has original jurisdiction and this case is properly removed.

19                   **REMOVAL IS TIMELY PURSUANT TO 28 U.S.C. § 1446(b)**

20       A notice of removal must be filed "within 30 days after the receipt by the  
 21 defendant, through service or otherwise" of the initial pleading from which  
 22 removability can be ascertained. 28 U.S.C. § 1446(b)(1). This removal notice is  
 23 timely because Zoho removed this action on November 14, 2019, within 30 days  
 24 from being served with a copy of the Summons and Complaint.

25                   **INTRADISTRICT ASSIGNMENT**

26       While this matter is an Intellectual Property Action and therefore may be  
 27 assigned to any division, it has been removed from the Superior Court for the State

1 of California for the Alameda County and a substantial part of the events which  
2 give rise to the Plaintiffs' claims are alleged to have occurred in the city of  
3 Pleasanton in the County of Alameda where Zoho has its principal place of  
4 business.

5 **WHEREFORE**, Zoho prays that the state court action now pending against  
6 it in the Superior Court for the State of California for the County of Alameda be  
7 removed to this United States District Court for the Northern District of California.  
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9 Date: November 14, 2019

By: /s/ Ryan J. Marton

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20 *Attorneys for Defendant ZOHO  
CORPORATION*

1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that on November 14, 2019, I caused a true and correct copy  
3 of Zoho Corporation's Notice of Removal to be served on counsel of record for  
4 Plaintiff, D. Burgundy Morgan via e-mail at [bmorgan@onellp.com](mailto:bmorgan@onellp.com), Deepali  
5 Brahmbhaat via email at [dbrahmbhatt@onellp.com](mailto:dbrahmbhatt@onellp.com), and James D. Myers via e-  
6 mail at [jmyers@sls-law.com](mailto:jmyers@sls-law.com).

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8                   Dated: November 14, 2019

By: /s/ Ryan J. Marton

9                   Ryan J. Marton

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